Form **990**

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

▶ The organization may have to use a copy of this return to satisfy state reporting requirements.

OMB No. 1545-0047

2004

Open to Public Inspection

A For the 2004 calendar year, or tax year beginning JUL 1, 2004 and ending JUN 30, 2005

B Check if applicable:
- [X] Address change
- [ ] Name change
- [ ] Initial return
- [ ] Final return
- [ ] Amended return
- [ ] Application pending

Please use IRS label or print or type. See Specific Instructions.

C Name of organization: INSTITUTE FOR JUSTICE

Number and street (or P.O. box if mail is not delivered to street address): 901 NORTH GLEBE ROAD

Room/suite: 900

City or town, state or country, and ZIP + 4: ARLINGTON, VA 22203

D Employer identification number: 52-1744337

E Telephone number: 703-682-9320

F Accounting method: [ ] Cash [X] Accrual [ ] Other (specify) ▶

- Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ).

H and I are not applicable to section 527 organizations.

H(a) Is this a group return for affiliates? [ ] Yes [X] No

H(b) If "Yes," enter number of affiliates ▶

H(c) Are all affiliates included? N/A [ ] Yes [ ] No (If "No," attach a list.)

H(d) Is this a separate return filed by an organization covered by a group ruling? [ ] Yes [X] No

G Website: ▶WWW.IJ.ORG

J Organization type (check only one) ▶ [X] 501(c)(3) ◀ (insert no.) [ ] 4947(a)(1) or [ ] 527

K Check here ▶ [ ] if the organization's gross receipts are normally not more than $25,000. The organization need not file a return with the IRS; but if the organization received a Form 990 Package in the mail, it should file a return without financial data. Some states require a complete return

I Group Exemption Number ▶

M Check ▶ [ ] if the organization is not required to attach Sch B (Form 990, 990-EZ, or 990-PF)

L Gross receipts. Add lines 6b, 8b, 9b, and 10b to line 12 ▶ 8,122,872.

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances

Revenue	1 a	Contributions, gifts, grants, and similar amounts received: Direct public support	1a	7,091,693.	
	b	Indirect public support	1b		
	c	Government contributions (grants)	1c		
	d	Total (add lines 1a through 1c) (cash $ 7,091,693. noncash $)			1d 7,091,693.
	2	Program service revenue including government fees and contracts (from Part VII, line 93)			2 192,599.
	3	Membership dues and assessments			3
	4	Interest on savings and temporary cash investments			4 223,766.
	5	Dividends and interest from securities			5
	6 a	Gross rents	6a		
	b	Less rental expenses	6b		
	c	Net rental income or (loss) (subtract line 6b from line 6a)			6c
	7	Other investment income (describe ▶)			7
	8 a	Gross amount from sales of assets other than inventory	(A) Securities 614,814.	8a	(B) Other
	b	Less cost or other basis and sales expenses	612,668.	8b	3,029.
	c	Gain or (loss) (attach schedule)	2,146.	8c	<3,029.>
	d	Net gain or (loss) (combine line 8c, columns (A) and (B)) STMT 1 STMT 2			8d <883.>
	9	Special events and activities (attach schedule). If any amount is from gaming, check here ▶ [ ]			
	a	Gross revenue (not including $ of contributions reported on line 1a)		9a	
	b	Less direct expenses other than fundraising expenses		9b	
	c	Net income or (loss) from special events (subtract line 9b from line 9a)			9c
	10 a	Gross sales of inventory, less returns and allowances		10a	
	b	Less cost of goods sold		10b	
	c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)			10c
	11	Other revenue (from Part VII, line 103)			11
	12	Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)			12 7,507,175.
Expenses	13	Program services (from line 44, column (B))			13 4,801,053.
	14	Management and general (from line 44, column (C))			14 497,175.
	15	Fundraising (from line 44, column (D))			15 735,030.
	16	Payments to affiliates (attach schedule)			16
	17	Total expenses (add lines 16 and 44, column (A))			17 6,033,258.
Net Assets	18	Excess or (deficit) for the year (subtract line 17 from line 12)			18 1,473,917.
	19	Net assets or fund balances at beginning of year (from line 73, column (A))			19 9,906,887.
	20	Other changes in net assets or fund balances (attach explanation) SEE STATEMENT 3			20 605,245.
	21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)			21 11,986,049.

Part II Statement of Functional Expenses All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others.

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I.		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22 Grants and allocations (attach schedule) (cash $ noncash $)	22				
23 Specific assistance to individuals (attach schedule)	23				
24 Benefits paid to or for members (attach schedule)	24				
25 Compensation of officers, directors, etc.	25	442,427.	367,837.	33,723.	40,867.
26 Other salaries and wages	26	2,471,584.	2,054,892.	188,392.	228,300.
27 Pension plan contributions	27	221,113.	177,159.	18,317.	25,637.
28 Other employee benefits	28	155,210.	120,571.	15,955.	18,684.
29 Payroll taxes	29	201,622.	164,684.	17,282.	19,656.
30 Professional fundraising fees	30				
31 Accounting fees	31	27,000.		27,000.	
32 Legal fees	32	18,892.		18,892.	
33 Supplies	33	60,927.	47,534.	6,213.	7,180.
34 Telephone	34	61,326.	53,782.	3,553.	3,991.
35 Postage and shipping	35	170,098.	62,191.	3,747.	104,160.
36 Occupancy	36	543,818.	438,688.	45,649.	59,481.
37 Equipment rental and maintenance	37	15,253.	13,450.	935.	868.
38 Printing and publications	38	406,109.	240,902.	1,579.	163,628.
39 Travel	39	221,595.	200,084.	13,070.	8,441.
40 Conferences, conventions, and meetings	40	21,984.	15,689.	5,338.	957.
41 Interest	41				
42 Depreciation, depletion, etc. (attach schedule)	42	136,965.	108,263.	12,476.	16,226.
43 Other expenses not covered above (itemize):					
a	43a				
b	43b				
c	43c				
d	43d				
e SEE STATEMENT 4	43e	857,335.	735,327.	85,054.	36,954.
44 Total functional expenses (add lines 22 through 43). Organizations completing columns (B)-(D), carry these totals to lines 13-15	44	6,033,258.	4,801,053.	497,175.	735,030.

Joint Costs Check ▶ ☐ if you are following SOP 98-2.

Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services? ▶ ☐ Yes ☒ No

If "Yes," enter (i) the aggregate amount of these joint costs $ _____ . (ii) the amount allocated to Program services $ _____ .

(iii) the amount allocated to Management and general $ _____ , and (iv) the amount allocated to Fundraising $ _____

Part III Statement of Program Service Accomplishments

What is the organization's primary exempt purpose? ▶ SEE STATEMENT 5

All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable. (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

Program Service Expenses (Required for 501(c)(3) and (4) orgs., and 4947(a)(1) trusts; but optional for others.)

a LITIGATIONS AND BRIEFS TO PROTECT CONSTITUTIONAL RIGHTS OF CLIENTS; EDUCATION THROUGH BROCHURES, EVENTS, MEDIA AND SPEECHES NATIONWIDE; TRAINING OF LAW STUDENTS AND UNDERGRADUATES. (Grants and allocations $) 4,801,053.

b (Grants and allocations $)

c (Grants and allocations $)

d (Grants and allocations $)

e Other program services (attach schedule) (Grants and allocations $)

f Total of Program Service Expenses (should equal line 44, column (B), Program services) ▶ 4,801,053.

Part IV Balance Sheets

Note: *Where required, attached schedules and amounts within the description column should be for end-of-year amounts only.*				(A) Beginning of year		(B) End of year
Assets	45	Cash - non-interest-bearing		583,796.	45	1,434,302.
	46	Savings and temporary cash investments			46	
	47 a	Accounts receivable	47a 18,926.			
	b	Less: allowance for doubtful accounts	47b	13,501.	47c	18,926.
	48 a	Pledges receivable	48a 476,400.			
	b	Less: allowance for doubtful accounts	48b	397,400.	48c	476,400.
	49	Grants receivable			49	
	50	Receivables from officers, directors, trustees, and key employees			50	
	51 a	Other notes and loans receivable	51a			
	b	Less allowance for doubtful accounts	51b		51c	
	52	Inventories for sale or use			52	
	53	Prepaid expenses and deferred charges		144,727.	53	153,768.
	54	Investments - securities STMT 6 STMT 9 ▶ ☐ Cost ☒ FMV		8,000,925.	54	9,145,364.
	55 a	Investments - land, buildings, and equipment, basis	55a			
	b	Less: accumulated depreciation	55b		55c	
	56	Investments - other SEE STATEMENT 7		685,000.	56	870,000.
	57 a	Land, buildings, and equipment basis	57a 980,550.			
	b	Less accumulated depreciation STMT 8	57b 796,474.	236,257.	57c	184,076.
	58	Other assets (describe ▶)			58	
	59	Total assets (add lines 45 through 58) (must equal line 74)		10,061,606.	59	12,282,836.
Liabilities	60	Accounts payable and accrued expenses		105,407.	60	251,210.
	61	Grants payable			61	
	62	Deferred revenue			62	
	63	Loans from officers, directors, trustees, and key employees			63	
	64 a	Tax-exempt bond liabilities			64a	
	b	Mortgages and other notes payable			64b	
	65	Other liabilities (describe ▶ CAPITAL LEASE OBLIGATION)		49,312.	65	45,577.
	66	Total liabilities (add lines 60 through 65)		154,719.	66	296,787.
Net Assets or Fund Balances		Organizations that follow SFAS 117, check here ▶ ☒ and complete lines 67 through 69 and lines 73 and 74.				
	67	Unrestricted		8,786,685.	67	10,184,129.
	68	Temporarily restricted		1,120,202.	68	1,801,920.
	69	Permanently restricted			69	
		Organizations that do not follow SFAS 117, check here ▶ ☐ and complete lines 70 through 74				
	70	Capital stock, trust principal, or current funds			70	
	71	Paid-in or capital surplus, or land, building, and equipment fund			71	
	72	Retained earnings, endowment, accumulated income, or other funds			72	
	73	Total net assets or fund balances (add lines 67 through 69 or lines 70 through 72, column (A) must equal line 19, column (B) must equal line 21)		9,906,887.	73	11,986,049.
	74	Total liabilities and net assets / fund balances (add lines 66 and 73)		10,061,606.	74	12,282,836.

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

Part IV-A Reconciliation of Revenue per Audited Financial Statements with Revenue per Return

a Total revenue, gains, and other support per audited financial statements ▶	a	8,112,420.
b Amounts included on line a but not on line 12, Form 990:		
(1) Net unrealized gains on investments .... $ 605,245.		
(2) Donated services and use of facilities ... $		
(3) Recoveries of prior year grants ..... $		
(4) Other (specify): $		
Add amounts on lines (1) through (4) ▶	b	605,245.
c Line a minus line b ▶	c	7,507,175.
d Amounts included on line 12, Form 990 but not on line a:		
(1) Investment expenses not included on line 6b, Form 990 $		
(2) Other (specify) $		
Add amounts on lines (1) and (2) ▶	d	0.
e Total revenue per line 12, Form 990 (line c plus line d) ▶	e	7,507,175.

Part IV-B Reconciliation of Expenses per Audited Financial Statements with Expenses per Return

a Total expenses and losses per audited financial statements ▶	a	6,033,258.
b Amounts included on line a but not on line 17, Form 990:		
(1) Donated services and use of facilities ... $		
(2) Prior year adjustments reported on line 20, Form 990 $		
(3) Losses reported on line 20, Form 990 $		
(4) Other (specify): $		
Add amounts on lines (1) through (4) ▶	b	0.
c Line a minus line b ▶	c	6,033,258.
d Amounts included on line 17, Form 990 but not on line a		
(1) Investment expenses not included on line 6b, Form 990 $		
(2) Other (specify) $		
Add amounts on lines (1) and (2) ▶	d	0.
e Total expenses per line 17, Form 990 (line c plus line d) ▶	e	6,033,258.

Part V List of Officers, Directors, Trustees, and Key Employees (List each one even if not compensated)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (If not paid, enter -0-)	(D) Contributions to employee benefit plans & deferred compensation	(E) Expense account and other allowances
SEE STATEMENT 10		442,427.	66,468.	0.

75 Did any officer, director, trustee, or key employee receive aggregate compensation of more than $100,000 from your organization and all related organizations, of which more than $10,000 was provided by the related organizations? If "Yes," attach schedule ▶ ☐ Yes ☒ No

Part VI Other Information

			Yes	No
76	Did the organization engage in any activity not previously reported to the IRS? If "Yes," attach a detailed description of each activity	76		X
77	Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes.	77		X
78 a	Did the organization have unrelated business gross income of $1,000 or more during the year covered by this return?	78a		X
b	If "Yes," has it filed a tax return on Form 990-T for this year? N/A	78b		
79	Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement	79		X
80 a	Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?	80a		X
b	If "Yes," enter the name of the organization ▶ _____ and check whether it is ☐ exempt or ☐ nonexempt.			
81 a	Enter direct or indirect political expenditures. See line 81 instructions 81a 0.			
b	Did the organization file Form 1120-POL for this year?	81b		X
82 a	Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?	82a		X
b	If "Yes," you may indicate the value of these items here Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions in Part III.) 82b N/A			
83 a	Did the organization comply with the public inspection requirements for returns and exemption applications?	83a	X	
b	Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	83b	X	
84 a	Did the organization solicit any contributions or gifts that were not tax deductible? N/A	84a		
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible? N/A	84b		
85	*501(c)(4), (5), or (6) organizations.* a Were substantially all dues nondeductible by members? N/A	85a		
b	Did the organization make only in-house lobbying expenditures of $2,000 or less? N/A	85b		
	If "Yes" was answered to either 85a or 85b, do not complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year.			
c	Dues, assessments, and similar amounts from members 85c N/A			
d	Section 162(e) lobbying and political expenditures 85d N/A			
e	Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices 85e N/A			
f	Taxable amount of lobbying and political expenditures (line 85d less 85e) 85f N/A			
g	Does the organization elect to pay the section 6033(e) tax on the amount on line 85f? N/A	85g		
h	If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount on line 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year? N/A	85h		
86	*501(c)(7) organizations.* Enter: a Initiation fees and capital contributions included on line 12 86a N/A			
b	Gross receipts, included on line 12, for public use of club facilities 86b N/A			
87	*501(c)(12) organizations.* Enter: a Gross income from members or shareholders 87a N/A			
b	Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.) 87b N/A			
88	At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301 7701-2 and 301.7701-3? If "Yes," complete Part IX	88		X
89 a	*501(c)(3) organizations.* Enter: Amount of tax imposed on the organization during the year under section 4911 ▶ 0. ; section 4912 ▶ 0. , section 4955 ▶ 0.			
b	*501(c)(3) and 501(c)(4) organizations.* Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction	89b		X
c	Enter Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958 ▶ 0.			
d	Enter Amount of tax on line 89c, above, reimbursed by the organization ▶ 0.			
90 a	List the states with which a copy of this return is filed ▶ SEE STATEMENT 11			
b	Number of employees employed in the pay period that includes March 12, 2004 90b 47			
91	The books are in care of ▶ THE ORGANIZATION Telephone no ▶ 703-682-9320			
	Located at ▶ 901 NORTH GLEBE ROAD, STE 900, ARLINGTON, VA ZIP + 4 ▶ 22203			
92	*Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of* Form 1041 - Check here ▶ ☐ and enter the amount of tax-exempt interest received or accrued during the tax year ▶ 92 N/A			

Part VII Analysis of Income-Producing Activities (See page 33 of the instructions.)

Note: *Enter gross amounts unless otherwise indicated.*	Unrelated business income (A) Business code	Unrelated business income (B) Amount	Excluded by section 512, 513, or 514 (C) Exclusion code	Excluded by section 512, 513, or 514 (D) Amount	(E) Related or exempt function income
93 Program service revenue:					
a ATTORNEY FEES					145,383.
b HONORARIA					5,400.
c OTHER INCOME					41,816.
d					
e					
f Medicare/Medicaid payments					
g Fees and contracts from government agencies					
94 Membership dues and assessments					
95 Interest on savings and temporary cash investments			14	223,766.	
96 Dividends and interest from securities					
97 Net rental income or (loss) from real estate:					
a debt-financed property					
b not debt-financed property					
98 Net rental income or (loss) from personal property					
99 Other investment income					
100 Gain or (loss) from sales of assets other than inventory			18	<883.>	
101 Net income or (loss) from special events					
102 Gross profit or (loss) from sales of inventory					
103 Other revenue:					
a					
b					
c					
d					
e					
104 Subtotal (add columns (B), (D), and (E))		0.		222,883.	192,599.
105 Total (add line 104, columns (B), (D), and (E))				▶	415,482.

Note *Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.*

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes (See page 34 of the instructions.)

Line No. ▼	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes).
	SEE STATEMENT 12

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities (See page 34 of the instructions.)

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
	%			
N/A	%			
	%			
	%			

Part X Information Regarding Transfers Associated with Personal Benefit Contracts (See page 34 of the instructions.)

(a) Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract? ☐ Yes ☒ No

(b) Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract? ☐ Yes ☒ No

Note *If "Yes" to (b), file Form 8870 and Form 4720 (see instructions)*

Please Sign Here — Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge

▶ William H. Mellor 12/23/05 ▶ William H. Mellor PRES/TREAS

Signature of officer — Date — Type or print name and title

Paid Preparer's Use Only

Preparer's signature ▶ Helene S Jakand — Date 12/21/05 — Check if self-employed ▶ ☐ — Preparer's SSN or PTIN P00172629

Firm's name (or yours if self-employed), address, and ZIP + 4 ▶ RUBINO & MCGEEHIN, CHARTERED, 6905 ROCKLEDGE DRIVE, SUITE 700, BETHESDA, MD 20817 — EIN ▶

Phone no ▶ 301-564-3636

423161 01-13-05

SCHEDULE A (Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(e), 501(f), 501(k), 501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

Supplementary Information-(See separate instructions.)

▶ MUST be completed by the above organizations and attached to their Form 990 or 990-EZ

OMB No. 1545-0047

2004

Name of the organization: INSTITUTE FOR JUSTICE

Employer identification number: 52: 1744337

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees

(See page 1 of the instructions. List each one. If there are none, enter "None.")

(a) Name and address of each employee paid more than $50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
JOHN KRAMER 901 NORTH GLEBE ROAD, STE 900, ARLINGTON, VA 22203	VP FOR COMMUN 40 HRS PER WK	153,781.	29,377.	
SCOTT BULLOCK 901 NORTH GLEBE ROAD, STE 900, ARLINGTON, VA 22203	SR. ATTORNEY 40 HRS PER WK	132,730.	19,449.	
DANA BERLINER 901 NORTH GLEBE ROAD, STE 900, ARLINGTON, VA 22203	SR. ATTORNEY 40 HRS PER WK	130,535.	19,818.	
CLARK NEILY 901 NORTH GLEBE ROAD, STE 900, ARLINGTON, VA 22203	SR. ATTORNEY 40 HRS PER WK	114,479.	18,817.	
STEVE SIMPSON 901 NORTH GLEBE ROAD, STE 900, ARLINGTON, VA 22203	SR. ATTORNEY 40 HRS PER WK	111,446.	24,116.	
Total number of other employees paid over $50,000 ▶	13			

Part II Compensation of the Five Highest Paid Independent Contractors for Professional Services

(See page 2 of the instructions. List each one (whether individuals or firms) If there are none, enter "None.")

(a) Name and address of each independent contractor paid more than $50,000	(b) Type of service	(c) Compensation
NONE		
Total number of others receiving over $50,000 for professional services ▶ 0		

Part III Statements About Activities (See page 2 of the instructions.)

		Yes	No
1 During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities ▶ $ _____ $ 18,399. (Must equal amounts on line 38, Part VI-A, or line i of Part VI-B.) VI-A, LINE 38B Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes," must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.	1	X	
2 During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? *(If the answer to any question is "Yes," attach a detailed statement explaining the transactions.)*			
a Sale, exchange, or leasing of property?	2a		X
b Lending of money or other extension of credit?	2b		X
c Furnishing of goods, services, or facilities?	2c		X
d Payment of compensation (or payment or reimbursement of expenses if more than $1,000)? SEE PART V, FORM 990	2d	X	
e Transfer of any part of its income or assets?	2e		X
3 a Do you make grants for scholarships, fellowships, student loans, etc.? (If "Yes," attach an explanation of how you determine that recipients qualify to receive payments.)	3a		X
b Do you have a section 403(b) annuity plan for your employees?	3b	X	
4 a Did you maintain any separate account for participating donors where donors have the right to provide advice on the use or distribution of funds?	4a		X
b Do you provide credit counseling, debt management, credit repair, or debt negotiation services?	4b		X

Part IV Reason for Non-Private Foundation Status (See pages 3 through 6 of the instructions.)

The organization is not a private foundation because it is: (Please check only ONE applicable box.)

- 5 ☐ A church, convention of churches, or association of churches Section 170(b)(1)(A)(i)
- 6 ☐ A school. Section 170(b)(1)(A)(ii). (Also complete Part V.)
- 7 ☐ A hospital or a cooperative hospital service organization Section 170(b)(1)(A)(iii).
- 8 ☐ A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(v)
- 9 ☐ A medical research organization operated in conjunction with a hospital Section 170(b)(1)(A)(iii). Enter the hospital's name, city, and state ▶ _____
- 10 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit Section 170(b)(1)(A)(iv) (Also complete the **Support Schedule** in Part IV-A.)
- 11a ☒ An organization that normally receives a substantial part of its support from a governmental unit or from the general public Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)
- 11b ☐ A community trust Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)
- 12 ☐ An organization that normally receives. **(1) more than 33 1/3%** of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions - subject to certain exceptions, and **(2) no more than 33 1/3%** of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975 See section 509(a)(2) (Also complete the **Support Schedule** in Part IV-A.)
- 13 ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in (1) lines 5 through 12 above, or (2) section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2) (See section 509(a)(3).)

Provide the following information about the supported organizations (See page 5 of the instructions.)

(a) Name(s) of supported organization(s)	(b) Line number from above

- 14 ☐ An organization organized and operated to test for public safety Section 509(a)(4) (See page 5 of the instructions.)

Part IV-A **Support Schedule** (Complete only if you checked a box on line 10, 11, or 12.) **Use cash method of accounting.**
Note: *You may use the worksheet in the Instructions for converting from the accrual to the cash method of accounting.*

Calendar year (or fiscal year beginning in) ▶	(a) 2003	(b) 2002	(c) 2001	(d) 2000	(e) Total
15 Gifts, grants, and contributions received. (Do not include unusual grants. See line 28.)	6,162,724.	6,028,230.	5,616,962.	5,317,720.	23,125,636.
16 Membership fees received					
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc., purpose	186,829.	141,089.	186,117.	7,689.	521,724.
18 Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975	166,030.	146,340.	143,684.	98,314.	554,368.
19 Net income from unrelated business activities not included in line 18					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge					
22 Other income. Attach a schedule. Do not include gain or (loss) from sale of capital assets					
23 Total of lines 15 through 22	6,515,583.	6,315,659.	5,946,763.	5,423,723.	24,201,728.
24 Line 23 minus line 17	6,328,754.	6,174,570.	5,760,646.	5,416,034.	23,680,004.
25 Enter 1% of line 23	65,156.	63,157.	59,468.	54,237.	

26	**Organizations described on lines 10 or 11:** a Enter **2%** of amount in column (e), line 24 ▶	26a	473,600.
b	Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 2000 through 2003 exceeded the amount shown in line 26a. **Do not file this list with your return.** Enter the total of all these excess amounts ▶	26b	3,481,976.
c	Total support for section 509(a)(1) test: Enter line 24, column (e) ▶	26c	23,680,004.
d	Add Amounts from column (e) for lines: 18 554,368. 19 ____ 22 ____ 26b 3,481,976. ▶	26d	4,036,344.
e	Public support (line 26c minus line 26d total) ▶	26e	19,643,660.
f	**Public support percentage (line 26e (numerator) divided by line 26c (denominator))** ▶	26f	82.9546%

27 **Organizations described on line 12:** a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of, and total amounts received in each year from, each "disqualified person." **Do not file this list with your return.** Enter the sum of such amounts for each year: N/A

(2003) (2002) (2001) (2000)

b For any amount included in line 17 that was received from each person (other than "disqualified persons"), prepare a list for your records to show the name of, and amount received for each year, that was more than the **larger** of **(1)** the amount on line 25 for the year or **(2)** $5,000. (Include in the list organizations described in lines 5 through 11, as well as individuals.) **Do not file this list with your return.** After computing the difference between the amount received and the larger amount described in **(1)** or **(2)**, enter the sum of these differences (the excess amounts) for each year N/A

(2003) (2002) (2001) (2000)

c	Add Amounts from column (e) for lines 15 ____ 16 ____ 17 ____ 20 ____ 21 ____ ▶	27c	N/A
d	Add Line 27a total ____ and line 27b total ____ ▶	27d	N/A
e	Public support (line 27c total minus line 27d total) ▶	27e	N/A
f	Total support for section 509(a)(2) test. Enter amount on line 23, column (e) ▶ 27f N/A		
g	**Public support percentage (line 27e (numerator) divided by line 27f (denominator))** ▶	27g	N/A %
h	**Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))** ▶	27h	N/A %

28 **Unusual Grants:** For an organization described in line 10, 11, or 12 that received any unusual grants during 2000 through 2003, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. **Do not file this list with your return.** Do not include these grants in line 15. NONE

Part V **Private School Questionnaire** (See page 7 of the instructions.) N/A

(To be completed ONLY by schools that checked the box on line 6 in Part IV)

			Yes	No
29	Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?	29		
30	Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues and other written communications with the public dealing with student admissions, programs, and scholarships?	30		
31	Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves?	31		
	If "Yes," please describe; if "No," please explain. (If you need more space, attach a separate statement.)			
32	Does the organization maintain the following:			
a	Records indicating the racial composition of the student body, faculty, and administrative staff?	32a		
b	Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?	32b		
c	Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?	32c		
d	Copies of all material used by the organization or on its behalf to solicit contributions?	32d		
	If you answered "No" to any of the above, please explain (If you need more space, attach a separate statement)			
33	Does the organization discriminate by race in any way with respect to:			
a	Students' rights or privileges?	33a		
b	Admissions policies?	33b		
c	Employment of faculty or administrative staff?	33c		
d	Scholarships or other financial assistance?	33d		
e	Educational policies?	33e		
f	Use of facilities?	33f		
g	Athletic programs?	33g		
h	Other extracurricular activities?	33h		
	If you answered "Yes" to any of the above, please explain. (If you need more space, attach a separate statement.)			
34 a	Does the organization receive any financial aid or assistance from a governmental agency?	34a		
b	Has the organization's right to such aid ever been revoked or suspended?	34b		
	If you answered "Yes" to either 34a or b, please explain using an attached statement			
35	Does the organization certify that it has complied with the applicable requirements of sections 4 01 through 4 05 of Rev Proc 75-50, 1975-2 C B 587, covering racial nondiscrimination? If "No," attach an explanation	35		

Part VI-A Lobbying Expenditures by Electing Public Charities (See page 9 of the instructions.)

(To be completed ONLY by an eligible organization that filed Form 5768)

Check ▶ a ☐ if the organization belongs to an affiliated group. Check ▶ b ☐ if you checked "a" and "limited control" provisions apply.

Limits on Lobbying Expenditures (The term "expenditures" means amounts paid or incurred.)		(a) Affiliated group totals	(b) To be completed for ALL electing organizations
		N/A	
36 Total lobbying expenditures to influence public opinion (grassroots lobbying)	36		18,399.
37 Total lobbying expenditures to influence a legislative body (direct lobbying)	37		0.
38 Total lobbying expenditures (add lines 36 and 37)	38		18,399.
39 Other exempt purpose expenditures	39		6,014,859.
40 Total exempt purpose expenditures (add lines 38 and 39)	40		6,033,258.
41 Lobbying nontaxable amount. Enter the amount from the following table - If the amount on line 40 is - / The lobbying nontaxable amount is -			
Not over $500,000 — 20% of the amount on line 40			
Over $500,000 but not over $1,000,000 — $100,000 plus 15% of the excess over $500,000			
Over $1,000,000 but not over $1,500,000 — $175,000 plus 10% of the excess over $1,000,000	41		451,663.
Over $1,500,000 but not over $17,000,000 — $225,000 plus 5% of the excess over $1,500,000			
Over $17,000,000 — $1,000,000.			
42 Grassroots nontaxable amount (enter 25% of line 41)	42		112,916.
43 Subtract line 42 from line 36. Enter -0- if line 42 is more than line 36	43		0.
44 Subtract line 41 from line 38. Enter -0- if line 41 is more than line 38	44		0.

Caution: *If there is an amount on either line 43 or line 44, you must file Form 4720.*

4-Year Averaging Period Under Section 501(h)

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the instructions for lines 45 through 50 on page 11 of the instructions)

Calendar year (or fiscal year beginning in) ▶	Lobbying Expenditures During 4-Year Averaging Period (a) 2004	(b) 2003	(c) 2002	(d) 2001	(e) Total
45 Lobbying nontaxable amount	451,663.	433,773.	412,545.	387,270.	1,685,251.
46 Lobbying ceiling amount (150% of line 45(e))					2,527,877.
47 Total lobbying expenditures	18,399.	99,660.	9,098.	2,611.	129,768.
48 Grassroots nontaxable amount	112,916.	108,443.	103,136.	96,818.	421,313.
49 Grassroots ceiling amount (150% of line 48(e))					631,970.
50 Grassroots lobbying expenditures	18,399.	99,660.	9,098.	2,611.	129,768.

Part VI-B Lobbying Activity by Nonelecting Public Charities

(For reporting only by organizations that did not complete Part VI-A) (See page 11 of the instructions) N/A

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of	Yes	No	Amount
a Volunteers			
b Paid staff or management (Include compensation in expenses reported on lines c through h)			
c Media advertisements			
d Mailings to members, legislators, or the public			
e Publications, or published or broadcast statements			
f Grants to other organizations for lobbying purposes			
g Direct contact with legislators, their staffs, government officials, or a legislative body			
h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means			
i Total lobbying expenditures (Add lines c through h)			0.

If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities

Part VII Information Regarding Transfers To and Transactions and Relationships With Noncharitable Exempt Organizations (See page 11 of the instructions.)

51 Did the reporting organization directly or indirectly engage in any of the following with any other organization described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527, relating to political organizations?

		Yes	No
a	Transfers from the reporting organization to a noncharitable exempt organization of:		
	(i) Cash	51a(i)		X
	(ii) Other assets	a(ii)		X
b	Other transactions:		
	(i) Sales or exchanges of assets with a noncharitable exempt organization	b(i)		X
	(ii) Purchases of assets from a noncharitable exempt organization	b(ii)		X
	(iii) Rental of facilities, equipment, or other assets	b(iii)		X
	(iv) Reimbursement arrangements	b(iv)		X
	(v) Loans or loan guarantees	b(v)		X
	(vi) Performance of services or membership or fundraising solicitations	b(vi)		X
c	Sharing of facilities, equipment, mailing lists, other assets, or paid employees	c		X

d If the answer to any of the above is "Yes," complete the following schedule Column (b) should always show the fair market value of the goods, other assets, or services given by the reporting organization. If the organization received less than fair market value in any transaction or sharing arrangement, show in column (d) the value of the goods, other assets, or services received N/A

(a) Line no	(b) Amount involved	(c) Name of noncharitable exempt organization	(d) Description of transfers, transactions, and sharing arrangements

52 a Is the organization directly or indirectly affiliated with, or related to, one or more tax-exempt organizations described in section 501(c) of the Code (other than section 501(c)(3)) or in section 527? ▶ ☐ Yes ☒ No

b If "Yes," complete the following schedule N/A

(a) Name of organization	(b) Type of organization	(c) Description of relationship

FORM 990 GAIN (LOSS) FROM PUBLICLY TRADED SECURITIES STATEMENT 1

DESCRIPTION	GROSS SALES PRICE	COST OR OTHER BASIS	EXPENSE OF SALE	NET GAIN OR (LOSS)
SALE OF SECURITIES	614,814.	612,668.	0.	2,146.
TO FORM 990, PART I, LINE 8	614,814.	612,668.	0.	2,146.

FORM 990 GAIN (LOSS) FROM SALE OF OTHER ASSETS STATEMENT 2

DESCRIPTION	DATE ACQUIRED	DATE SOLD	METHOD ACQUIRED
DISPOSAL OF FIXED ASSETS	VARIOUS	VARIOUS	PURCHASED

NAME OF BUYER	GROSS SALES PRICE	COST OR OTHER BASIS	EXPENSE OF SALE	DEPREC	NET GAIN OR (LOSS)
	0.	77,196.	0.	74,167.	<3,029.>
TO FM 990, PART I, LN 8		77,196.	0.	74,167.	<3,029.>

FORM 990 OTHER CHANGES IN NET ASSETS OR FUND BALANCES STATEMENT 3

DESCRIPTION	AMOUNT
UNREALIZED GAINS	605,245.
TOTAL TO FORM 990, PART I, LINE 20	605,245.

FORM 990 OTHER EXPENSES STATEMENT 4

DESCRIPTION	(A) TOTAL	(B) PROGRAM SERVICES	(C) MANAGEMENT AND GENERAL	(D) FUNDRAISING
COURT FEES	5,659.	5,659.		
INDEPENDENT CONTRACTORS	238,250.	220,041.	12,807.	5,402.
MEAL	33,721.	26,094.	6,422.	1,205.
BOOKS & SUBSCRIPTIONS	46,005.	36,545.	1,455.	8,005.
INSURANCE	70,919.	60,788.	8,578.	1,553.
TRANSCRIPTS AND COURT REPORTERS	15,900.	15,900.	0.	
MEDIA RELATIONS	36,688.	36,553.		135.
ADVERTISING	34,043.	34,043.		
EVENTS	184,300.	169,727.	8,467.	6,106.
MISCELLANEOUS	14,255.	7,404.	7,317.	<466.>
PROFESSIONAL DUES/CLE FEES	27,679.	23,208.	431.	4,040.
LEGAL RESEARCH TOOL	99,386.	99,365.	21.	
BANK CHARGES AND INTEREST	23,235.		23,235.	

REPAIR & MAINTENANCE	16,321.		16,321.	
MAILING LIST RENTAL	10,974.			10,974.
TOTAL TO FM 990, LN 43	857,335.	735,327.	85,054.	36,954.

FORM 990 STATEMENT OF ORGANIZATION'S PRIMARY EXEMPT PURPOSE PART III STATEMENT 5

EXPLANATION

TO PROTECT THE CONSTITUTIONAL RIGHTS OF CLIENTS AND TO EDUCATE THE PUBLIC THROUGH BROCHURES, EVENTS, MEDIA, AND SPEECHES NATIONWIDE.

FORM 990 NON-GOVERNMENT SECURITIES STATEMENT 6

SECURITY DESCRIPTION	COST/FMV	CORPORATE STOCKS	CORPORATE BONDS	OTHER PUBLICLY TRADED SECURITIES	TOTAL NON-GOV'T SECURITIES
CORPORATE DEBT	FMV		285,728.		285,728.
TO FORM 990, LINE 54, COL B			285,728.		285,728.

FORM 990 OTHER INVESTMENTS STATEMENT 7

DESCRIPTION	VALUATION METHOD	AMOUNT
CERTIFICATES OF DEPOSIT	COST	870,000.
TOTAL TO FORM 990, PART IV, LINE 56, COLUMN B		870,000.

FORM 990 DEPRECIATION OF ASSETS NOT HELD FOR INVESTMENT STATEMENT 8

DESCRIPTION	COST OR OTHER BASIS	ACCUMULATED DEPRECIATION	BOOK VALUE
FURNITURE AND EQUIPMENT	384,554.	302,100.	82,454.
LEASEHOLD IMPROVEMENTS	281,044.	233,102.	47,942.
COMPUTERS AND SOFTWARE	314,952.	261,272.	53,680.
TOTAL TO FORM 990, PART IV, LN 57	980,550.	796,474.	184,076.

FORM 990 OTHER SECURITIES STATEMENT 9

SECURITY DESCRIPTION	COST/FMV	OTHER SECURITIES
VANGUARD GROUP (MUTUAL FUNDS)	FMV	8,706,015.
MONEY MARKET FUNDS	FMV	153,621.
TO FORM 990, LINE 54, COL B		8,859,636.

FORM 990 PART V - LIST OF OFFICERS, DIRECTORS, TRUSTEES AND KEY EMPLOYEES STATEMENT 10

NAME AND ADDRESS	TITLE AND AVRG HRS/WK	COMPEN-SATION	EMPLOYEE BEN PLAN CONTRIB	EXPENSE ACCOUNT
DAVID B. KENNEDY 901 NORTH GLEBE ROAD, STE 900 ARLINGTON, VA 22203	CHAIRMAN 1-2	0.	0.	0.
MARK BABUNOVIC 901 NORTH GLEBE ROAD, STE 900 ARLINGTON, VA 22203	MEMBER 1-2	0.	0.	0.
ARTHUR DANTCHIK 901 NORTH GLEBE ROAD, STE 900 ARLINGTON, VA 22203	MEMBER 1-2	0.	0.	0.
JAMES LINTOTT 901 NORTH GLEBE ROAD, STE 900 ARLINGTON, VA 22203	MEMBER 1-2	0.	0.	0.
WILLIAM H. MELLOR 901 NORTH GLEBE ROAD, STE 900 ARLINGTON, VA 22203	PRES & GENERAL COUNSEL 40	327,212.	51,739.	0.
DEB SIMPSON 901 NORTH GLEBE ROAD, STE 900 ARLINGTON, VA 22203	MANAGING DIR. & SEC'Y 40	115,215.	14,729.	0.
GERRIT WORMHOUDT 901 NORTH GLEBE ROAD, STE 900 ARLINGTON, VA 22203	MEMBER 1-2	0.	0.	0.
ROBERT A. LEVY 901 NORTH GLEBE ROAD, STE 900 ARLINGTON, VA 22203	MEMBER 1-2	0.	0.	0.
ABIGAIL THERNSTROM 901 NORTH GLEBE ROAD, STE 900 ARLINGTON, VA 22203	MEMBER 1-2	0.	0.	0.
STEPHEN W. MODZELEWSKI 901 NORTH GLEBE ROAD, STE 900 ARLINGTON, VA 22203	MEMBER 1-2	0.	0.	0.
TOTALS INCLUDED ON FORM 990, PART V		442,427.	66,468.	0.

FORM 990 LIST OF STATES RECEIVING COPY OF RETURN STATEMENT 11
PART VI, LINE 90

STATES

AL, AK, AZ, AR, CA, CT, DC, FL, GA, KS, KY, ME, MD, MA, MI, MN, MS, NH, NJ, NM, NC, ND, OH, OK, OR, PA, RI, TN, UT, WA, WV, WI, NY, SC, VA, IL, MO

FORM 990 PART VIII - RELATIONSHIP OF ACTIVITIES TO ACCOMPLISHMENT OF EXEMPT PURPOSES STATEMENT 12

LINE	EXPLANATION OF RELATIONSHIP OF ACTIVITIES
93A	ATTORNEY FEES ARE ACCEPTED WHEN AN AMOUNT IS AWARDED BY THE COURT AND PAID BY THE OPPOSING PARTY OR WHEN AN AMOUNT IS AWARDED BY STATUE.
93B	SPEECHES PERTAINING TO THE INSTITUTE'S EXEMPT PURPOSE BY PROVIDING A MEANS OF EDUCATING THE PUBLIC.
93C	MISCELLANEOUS INCOME DIRECTLY RELATED TO THE INSTITUTE'S EXEMPT PURPOSE BY PROVIDING A MEANS TO PROTECT THE CONSTITUTIONAL RIGHTS OF CLIENTS.

LITIGATION REPORT FOR THE JUNE 2005 BOARD MEETING

CASES ADDED

Anderson v. Board of Barber & Cosmetologist Examiners, (Minnesota Chapter – Economic Liberty)

State Board of Embalmers & Funeral Directors v. Gegner, (Economic Liberty – Missouri Caskets)

CASES REMOVED

Powers, et al. v. Harris, et al. (Economic Liberty – Oklahoma Caskets)
Final Outcome: The U.S. Supreme Court denied our cert petition on March 21, 2005. Accordingly, the case is now closed.

Armstrong v. Lunsford (Economic Liberty—Mississippi Braiding)
Final Outcome: Legislature passed new law favorable to braiders Case voluntarily dismissed.

This case challenged the regulation of instructors of African hairbraiding in Mississippi. While we were engaging in discovery, the cosmetology board proposed a new statute that would have created a new licensing category for braiders with a more limited but still onerous licensing regime. Along with our clients and others, Valerie Bayham successfully lobbied the legislature to drastically reduce the licensing requirements for braiders. On April 19, 2005, the Governor signed legislation that exempted braiders from the control of the Mississippi State Board of Cosmetology. Instead, braiders will simply have to pay a $25 registration fee to the Board of Health, post a basic health and sanitation pamphlet in their braiding establishment, and complete a self-test on the sanitation issues raised by the pamphlet. The braiding exemption is scheduled to sunset in 2008. Pursuant to an agreed order, the court dismissed IJ's complaint without prejudice on April 27, 2005. Client Melony Armstrong will be graduating her first class of students and has already hired more braiders for her salon. Client Margaret Burden has begun braiding part-time, and client Christina Griffin is just finishing her class to learn braiding skills, she is looking forward to beginning work. This case is now concluded

Diaw v. Stephens, et al., (Washington Chapter – Economic Liberty)
Final Outcome: Department of Licensing adopted an Interpretive Statement exempting African hairbraiders from the cosmetology requirements. Case dismissed.

This case challenged efforts by the Washington State Department of Licensing (DOL) to require African hairbraiders to become licensed cosmetologists. IJ-WA represented Benta Diaw, a Senegalese immigrant who owns the Touba African Hairbraiding salon in Seattle. After receiving the results of a public records act request that demonstrated that the DOL had prosecuted a hairbraiding salon (which voluntarily closed down), IJ-WA brought a civil rights complaint on August 5, 2004 on Benta's behalf, alleging that the DOL's enforcement of such a restriction violated the privileges or immunities clause of the Washington Constitution. Within

two-and-a-half hours of the filing of the complaint, the DOL issued a press release disclaiming any intention to regulate hairbraiding salons. On September 20, 2004, the DOL moved to dismiss the suit as moot based on their representation that the DOL had concluded four days after the filing of the complaint that hairbraiding does not constitute the practice of cosmetology. In our response (filed January 10, 2005), we argued that dismissal would leave the DOL free to return to regulating hairbraiding and that the case is not moot until the DOL publishes a regulation in the Washington Administrative Code specifically disclaiming jurisdiction over hairbraiders.

At the state's request, oral arguments on the motion were postponed until March 11, 2005 to give the State time to memorialize its position. Although the DOL ultimately refused to give hairbraiders the level of protection advocated by IJ, the cosmetology board adopted an Interpretive Statement exempting African hairbraiders from its requirements, thus officially acknowledging their right to legally pursue their chosen profession. The court held that the state's new position effectively mooted the dispute and the case was subsequently dismissed

ForSaleByOwner.com, et al. v. Zinneman, et al. (First Amendment)
Final Outcome: Victory! and attorneys fees check
Court: U.S. District Court for the Eastern District of California, Judge Morrison C. England (Sacramento)
IJ Attorneys: Steve Simpson and Chip Mellor
Local Counsel: Dan Kelleher of O'Brien & Kelleher

The Court granted our motion for summary judgment on November 18, 2004, concluding that the First Amendment prohibits the State of California from requiring a real estate broker's license for websites but not newspapers. The State did not appeal the case or oppose our motion for attorneys fees. The Court granted our motion for fees, and we received a check from the State. This case is now closed, but we are researching similar challenges in other states and will follow up with appropriate potential cases soon.

By way of background, we filed this First Amendment lawsuit on May 14, 2003 after the State of California began requiring websites that advertised California properties for sale to obtain a real estate broker's license. The licensing scheme expressly exempted "newspapers of general circulation," so we argued that the law was an unconstitutional prior restraint on its face, that it unconstitutionally discriminated on the basis of content and media, and that even if the speech involved was only "commercial" the law still failed the test for regulations of commercial speech.

The court rejected our facial prior restraint claim, reasoning that the licensing scheme was not subject to facial attack on this ground because it did not directly regulate speech, but was primarily concerned only with conduct – that is, the profession of real estate brokering. This conclusion was wrong, in our view, in that the licensing scheme directly regulated speech by its terms (by, for instance, requiring a license for those who "advertised" or "listed" properties for sale, and by expressly exempting newspapers) The ruling is understandable from a purely pragmatic standpoint, however, in that a ruling that the law was unconstitutional on its face would have raised complicated questions about the scope of the remedy and whether it

invalidated the licensing requirement for every real estate agent, rather than simply publishers of advertising and information. In short, we think the judge took the simple route.

In ruling that the law was unconstitutional as applied to ForSaleByOwner.com, however, the judge still gave us the result that we wanted, and strengthened First Amendment law in two important respects. First, the court rejected the State's argument that the speech was merely "commercial" and therefore subject to the lesser standard of scrutiny applicable to commercial speech. Second, the court's core holding—that the State cannot require a license for websites but exempt newspapers—strengthens protections for Internet publishers and prevents governments from making arbitrary distinctions among speakers. The decision was thus perfectly consistent with our core First Amendment mission.

Veneman, et al. v. Livestock Marketing Assoc. et al.; Nebraska Cattlemen, Inc., et. al. v. Livestock Marketing Assoc. et al. (First Amendment—Amicus Brief)
Final Outcome: Loss. Case vacated and remanded.

The unfortunate May 23, 2005 decision in this Supreme Court case is discussed in the First Amendment section below, primarily in relation to our ongoing litigation in the "got milk" case, *Cochran v. Veneman*.

INSTITUTE FOR JUSTICE - CASE UPDATE

June 2005

EDUCATION

Holmes v. Bush; Florida Education Association v. State Board of Education
(Florida School Choice)
Court. Florida Supreme Court
IJ Attorneys: Clark Neily, David Roland
Local Counsel: Ken Sukhia

Briefing in the Florida Supreme Court was completed in late March 2005. The court has scheduled oral argument for June 7, 2005. As always, we are working closely with the state's legal team regarding strategy and positioning of the issues, including issues that are unique to our clients as parents of children actually enrolled in the Opportunity Scholarship program.

There are two distinct issues before the court: (i) whether the Opportunity Scholarship program violates Florida's Blaine Amendment (which forbids taking revenue from the state treasury "directly or indirectly in aid of" any religious organizations) because it includes religious schools; and (ii) whether the program violates the so-called "uniformity" provision of the Florida constitution, which requires the state to make "adequate provision" for a "uniform, efficient, safe, secure, and high quality system of free public schools." The court could base its ruling on either or both of those claims.

We have been very busy on both media and outreach fronts in preparation for the oral argument, including working with John Kirtley and others to coordinate a major rally outside the Florida Supreme Court on the day of the argument and holding editorial board meetings with newspapers throughout the state.

Winn v. Hibbs (Arizona Chapter School Choice II)
Court: U.S. District Court for District of Arizona
IJ Attorneys: Tim Keller and Jennifer Barnett, along with Clint Bolick *Of Counsel*
Local Counsel: No longer necessary

In June, the U.S. Supreme Court affirmed the Ninth Circuit ruling reversing the District Court's dismissal of this AzCLU Establishment Clause challenge to the Arizona scholarship tax credit. The District Court has now resumed jurisdiction IJ has successfully intervened in the case on behalf of parents and children and one tuition granting organization (The Arizona School Choice Trust). The Alliance Defense Fund has moved to intervene on behalf of the Arizona Christian School Tuition Organization.

Dispositive motions were filed at the end of September. IJ filed a motion to dismiss arguing that (1) the AzCLU taxpayer plaintiffs lack standing to bring this challenge; (2) under the U.S. Supreme Court's decision in *Zelman* the plaintiffs fail to state a legally cognizable claim, and (3) that *res judicata* bars this litigation because the same issues were fully litigated in

the state supreme court. The State filed a motion for judgment on the pleadings after filing an answer to the complaint. The Alliance Defense Fund also filed a motion to dismiss. Briefing was completed on November 15, 2004.

The Judge did not grant oral argument and issued a ruling on March 24, 2005 granting IJ's motion to dismiss and also granting the Arizona Christian School Tuition Organization's motion to intervene. The AzCLU appealed the decision to the Ninth Circuit Court of Appeals on 4/22/05. AzCLU must file its opening brief on 8/8/05 and IJ's response is due on 9/7/05.

Anderson, et al. v. Durham, et al. (Maine School Choice)
Court: ME Supreme Judicial Court
IJ Attorneys: Dick Komer and Clark Neily
Local counsel: Jeffrey Edwards

On September 18, 2002, we filed a new lawsuit challenging Maine's exclusion of religious schools from its local-option school choice program. Under that program, school districts that do not operate public schools (usually high schools) can pay tuition for their students to attend other districts' public schools or private schools. In 1981, Maine eliminated the participation of religious schools, on the belief that the federal Establishment Clause required their exclusion. IJ challenged this exclusion in the *Bagley* case, in which the Maine Supreme Court held that the exclusion was in fact necessary to avoid an Establishment Clause violation. After the U.S. Supreme Court upheld the Cleveland voucher program, the Maine Attorney General issued an opinion letter instructing that districts continue to exclude the choice of religious schools.

IJ represents eight families in three tuitioning towns that send their children to two religious high schools, one Catholic and the other Seventh Day Adventist. The defendants are the Maine Education Department and its commissioner and the three town school departments and their superintendents. Our position is that *Zelman* makes clear that the Establishment Clause would not be violated by the inclusion of religious choices in Maine's program and that the continued exclusion of those choices violates our clients' federal constitutional rights.

The Maine Civil Liberties Union and the Maine Education Association (the NEA's state affiliate) have intervened on behalf of some taxpayers as they did (with our consent) in the *Bagley* litigation. The three town school districts moved to be dismissed as they did in *Bagley* on the basis that they are merely following the state law. The judge granted their motion on May 14th Cross motions for summary judgment were filed June 4, 2004. On September 30th, the judge granted the other side's motion for summary judgment and denied ours. He ruled that while *Zelman* had undercut the rationale of *Bagley*, the state had offered other compelling reasons for excluding the choice of religious schools

We filed a notice of appeal by October 21 seeking to have these decisions overruled by the Maine Supreme Court. Briefing was completed in January 2005, and oral argument was held on March 24th. Questioning was quite hostile, with only one justice expressing clear support for our position

FIRST AMENDMENT

Taucher, et al. v. Born, et al. (First Amendment CFTC challenge)
Court: U.S. District Court for the District of Columbia
IJ Attorneys: Scott Bullock, Steve Simpson, and Chip Mellor

We filed for attorney and expert witness fees under the Equal Access to Justice Act (EAJA) after our successful CFTC challenge. Unlike in Section 1983 cases, you are not automatically entitled to fees if you prevail under EAJA, which applies to the federal government. You must show not only that you prevailed but also that the government's legal position in the case was not "substantially justified." After some initial settlement negotiations, the CFTC decided that it would litigate and not agree to any amount.

We briefed the question of whether the CFTC's position was substantially justified and waited about a year for the judge's opinion. On December 18, 2002, Magistrate Judge John Facciola, to whom the attorney fee question was assigned, issued a blistering opinion against the CFTC, ruling that the agency's position was not "substantially justified." Having determined that the CFTC must pay our attorney fees, he ordered the parties to try to settle the matter. The settlement discussions ground to a halt as the CFTC offered us ridiculously low amounts to settle the case (for instance, its opening offer was $25,000). Given their recalcitrant efforts to settle this matter, we ended the negotiations and filed an amended application to the court on February 7, 2003.

On November 25, 2003, the judge awarded us almost all the attorneys fees we asked for The CFTC appealed the judge's ruling to the U.S. Court of Appeals for the D.C. Circuit. Briefing took place over Summer 2004 and oral argument was held on October 8, 2004 before Judges Edwards, Henderson, and Roberts of the D.C. Circuit. On January 28, 2005, the D.C. Circuit, in a 2-1 ruling, overturned the decision and held that the CFTC's position, although wrong, was nevertheless "substantially justified." The Court ruled (wrongly) that there was no clear cut U.S. Supreme Court precedents on the matter at the time of the litigation so the CFTC could have reasonably believed that its position as correct. Judge Edwards wrote a very strong dissent, declaring the CFTC's position in the litigation "bordered on the frivolous" and accused the majority of adopting the wrong standard in reviewing the lower court judgment. We filed a petition for rehearing en banc but the D.C. Circuit denied it by a narrow 5-4 vote. Because there is no split on this issue in the circuit courts, we doubt we will do a petition for certiorari to the U.S. Supreme Court on this issue.

Salib v. City of Mesa (Arizona Chapter First Amendment—Winchell's Donut Shop)
Court: Arizona Court of Appeals
IJ Attorneys: Tim Keller and Jennifer Barnett
Pro Bono Counsel: Court Rich

This is the Arizona Chapter's first referral case. Court Rich is our *pro bono* lead counsel and is working closely with Tim Keller on appeal.

The Arizona Court of Appeals asked that we participate in the Community Connection Program by arguing the appeal at Horizon High School, Tim's alma matter. Tim argued before the Court on April 7, 2005 in front of approximately 200 high school students. We are now awaiting a decision from the Court.

Cochran v. Veneman, et al. (First Amendment—"got milk")
Court: U.S. Court of Appeals for the Third Circuit (on appeal from the U.S. Dist. Ct. for the Middle District of Pennsylvania)
IJ Attorneys: Steve Simpson, Chip Mellor, and Scott Bullock
Local Counsel: Walter Grabowski of Holland & Grabowski in Wilkes Barre, Pa.

We took this case as an appeal and won a unanimous judgment in the Third Circuit on February 24, 2004, holding that the federal program that finances the "got milk" advertising campaign unconstitutionally compels dairy producers to subsidize speech with which they disagree. The government and private intervenors (five farmers who support the program) filed petitions for certiorari to the Supreme Court in August and September. Although those petitions are still pending, we expect the Supreme Court to vacate the Third Circuit's decision and remand the case for further proceedings in light of its recent (May 23, 2005) decision in the consolidated cases, *Veneman, et al. v. Livestock Marketing Assoc. et al.; Nebraska Cattlemen, Inc., et. al. v. Livestock Marketing Assoc. et al.* We filed an amicus brief in that case (see below) because it addressed the constitutionality of a federal agricultural program nearly identical to the Dairy Act we challenged in the Cochran case.

In *Livestock Marketing*, the Supreme Court upheld the constitutionality of the Beef Promotion Act on the grounds that the advertising funded by the act is "government speech" and thus immune from First Amendment scrutiny. Reasoning from the unexceptional principle that government can speak on its own behalf without being edited by every taxpayer, the Court concluded that it can compel individuals to pay special assessments for an advertising program even though they disagree with the message. Thus the Court distinguished between being compelled to speak in one's own right (which is still unconstitutional) and being compelled to fund a program of speech. The latter is constitutional, held the Court, as long as the message of the advertising is not attributed specifically to the dissenting producer. The means by which the funds are collected, be they general tax revenues or targeted assessments, is irrelevant. The Court expressly left open the possibility of an as-applied challenge to the law on the grounds that the advertising is attributed to specific producers, which, presumably, the plaintiffs in the beef case will pursue on remand.

This is a surprising decision that has negative ramifications for challenges to other agricultural promotion acts, including our challenge to the Dairy Promotion Act. The decision means that these programs (of which there are many at the state and federal level) will be upheld as "government speech" unless those subject to the assessments can demonstrate that the advertising is attributed to them, specifically. Unfortunately, the Supreme Court has set the bar quite high on this issue. The Court held in Livestock Marketing that the salient question is not whether the ads imply that they are sponsored by "America's Beef Producers" rather than the government, but whether they claim that specific producers support the advertising Thus, challengers must demonstrate that viewers of the ads would conclude that the ads speak for specific producers, not simply that they don't disclose that they are part of a government

program. The fact that the dissenting producers are American beef producers and thus obviously members of the group "America's Beef Producers" is not enough.

In light of Livestock Marketing, it is likely that the Supreme Court will grant cert in our case and then vacate the Third Circuit's decision and remand for proceedings consistent with its decision. We will then have the opportunity to argue that advertising under the Dairy Act is attributed to producers like the Cochrans and thus violates the First Amendment. We have not yet decided how to proceed from here.

By way of background, our clients are Joseph and Brenda Cochran, who own and operate a commercial dairy farm in Tioga County, Pennsylvania. They challenged the Dairy Promotion Act in district court arguing that the Act's mandatory assessments violated their free speech rights by requiring them to finance speech with which they disagree. The advertisements created under the Dairy Act promote milk as a generic product. The Cochrans are traditional dairy farmers (i.e., they don't use bovine growth hormone and are generally easier on their cows and on their land than larger scale commercial dairy farms) and thus have an interest in distinguishing their milk and their farming methods from others. They object to being required to finance advertising that suggests that all milk is the same regardless of how it is produced, especially since they have chosen to farm in a traditional manner. The Cochrans lost their case in district court, and we took over the appeal last summer.

Veneman, et al. v. Livestock Marketing Assoc. et al.; Nebraska Cattlemen, Inc., et. al. v. Livestock Marketing Assoc. et al. (First Amendment—Amicus Brief)
Court: United States Supreme Court
IJ Attorneys: Steve Simpson

We filed an amicus brief in this case. As noted under *Cochran v. Veneman, et al.*, the Supreme Court issued its decision on May 23, 2005, upholding the Beef Promotion Act on the grounds that the advertising under the act is government speech and thus immune from First Amendment scrutiny. Our involvement in this case is now concluded.

Ballen, et al. v. City of Redmond, et al. (Washington Chapter – First Amendment)
Court: U.S. Dist. Ct. for the Western District of Washington
IJ Attorneys: William R. Maurer, Jeanette Petersen and Chanty Osborn

This is a challenge to the City of Redmond's ban on portable signs containing certain kinds of commercial speech. IJ-WA represents Dennis Ballen, the owner of Blazing Bagels. Ballen had an employee stand on the corner of a busy nearby street with a sign saying "Fresh Bagels – Now Open" and a detachable arrow directing customers to the store. In June 2003, the City of Redmond issued a cease and desist letter to Ballen informing him that his sign holder violated the City's prohibition against portable signs. The ordinance cited by the City in its cease and desist letter bans all portable signs and then creates five pages of exceptions based on the content of the message sought to be conveyed. For instance, signs advertising bagels are illegal, but those advertising real estate are not. Exceptions also exist for political signs, celebration signs, and governmental signs

IJ-WA brought suit in King County Superior Court alleging that the ordinance violates Ballen's free speech rights under the United States and Washington Constitutions The City removed the case to federal court. We moved for a preliminary injunction and to certify to the Washington Supreme Court the question of whether the Washington Constitution permits such a ban. Federal District Judge Thomas Zilly denied the motion to certify, but granted our motion for a preliminary injunction on January 21, 2004.

On April 20, 2004, IJ-WA and the City of Redmond filed cross motions for summary judgment. Briefing was completed on May 13, 2004 On June 2, 2004, we received an order of recusal from Judge Zilly and the case was reassigned to Federal District Judge Marsha Pechman. On June 15, 2004, Judge Pechman granted our motion for summary judgment and denied the City's motion for summary judgment. The City appealed this order to the Ninth Circuit on July 13, 2004. On June 21, 2004, we filed a Motion to Publish the decision. On 7/15/04, the court denied the motion, citing the pending appeal.

On June 29, 2004, we filed a motion for attorney's fees and a motion for bill of costs. The court granted our motion for bill of costs on July 15, 2004, awarding us $1687.24. The City did not appeal this order and has paid the costs awarded by the Court. Judge Pechman granted our motion for attorney's fees on August 5, 2004. The City appealed the order for attorneys' fees on August 24, 2004, and the Court issued separate briefing schedules.

We submitted our reply brief on the merits on November 28, and the City submitted their opening brief for attorney's fees on December 10. On December 6, Perkins Coie submitted an amicus brief on behalf of realtors arguing that district court ruling should be upheld and that severance is an improper remedy. We filed our response to the City's appeal of our fees on January 10, and the City's fee rebuttal was filed on January 24. Oral arguments have yet to be scheduled.

In the meantime, the City of Redmond has passed two "emergency interim sign ordinances," amending the sign code to restrict the display of portable signs to one per business and limiting sign size (to six feet), hours of display (8 am to 5 pm), and prohibiting animation and placement on sidewalks, median strips, vehicle lanes, bikeways, and trails. The emergency ordinances allow realtors to display one freestanding sign and one portable sign per residential property. Ballen (accompanied by an IJ-WA staff attorney) testified against the emergency ordinances at a public hearing held on May 3, 2005, and is currently drafting an op ed criticizing the City's actions. IJ-WA submitted a public records request for all documents concerning the emergency ordinances on May 4, 2005 and expects a response by May 27.

Epoch Design, LLC (d/b/a Futon Factory), et al. v. City of Lynnwood (Washington Chapter First Amendment)
Court: Snohomish County Superior Court
IJ Attorneys: William R. Maurer and Charity Osborn

This is a challenge to the City of Lynnwood's ban on portable signs containing certain kinds of commercial and non-commercial speech. IJ-WA represents the owners of the Futon Factory, a small chain of family owned stores in the Puget Sound area. On weekends, the owners of the store employed a person (via a temporary employment agency) to stand on a near-

by street with various signs advertising the Futon Factory. The sign carried by the employee was an "A-frame" sign with text on both the front and back of the signs.

A Lynnwood Code Enforcement Officer apparently verbally warned the owners a number of times that their sign was in violation of the Lynnwood Municipal Code (LMC). The owners ignored the warnings. In mid-December 2003, the owners changed one of the signs on the A-frame to include the message "The Futon Factory Believes in Free Speech," while continuing to display a commercial message on the other side of the A-frame. On February 13, 2004, the City issued a written warning to the owners. On February 24, 2004, the City issued a "Civil Penalty Order," alleging that the continued use of a sign carrier violated the provisions of the LMC.

On March 5, 2004, the owners appealed the Civil Penalty Order, *pro se*, claiming that the Lynnwood ordinance was "unconstitutional, unfair to business, [and] discriminatory selective enforcement." The City moved for Summary Dismissal of the action, alleging that the Hearing Examiner lacked jurisdiction to consider the challenge to the constitutionality of the Lynnwood ordinance. IJ-WA concurred. On June 3, 2004, the Hearing Examiner issued an Order of Summary Dismissal, on the grounds that the appeal "fails to state a claim for which the Examiner has jurisdiction to grant relief, is without merit on its face [and/or] is frivolous." This Order terminated the Examiner's jurisdiction over the entire administrative appeal.

IJ-WA filed a Land Use Petition Act (LUPA) appeal in Snohomish County Superior Court on June 22, 2004. LUPA provides for an expedited review of certain issues with the use of land. On July 2, 2004, IJ-WA filed an amended complaint to add a civil rights claim and a claim under the Washington Uniform Declaratory Judgments Act (UDJA). On August 11, 2004, the Superior Court granted the City's motion to dismiss the LUPA claim, leaving the UDJA and civil rights claims intact, albeit without expedited consideration by the court.

The City filed a Motion for Summary Judgment on November 22, 2004, requesting that the court dismiss IJ-WA's civil rights complaint on grounds that the remedy provided by LUPA is adequate and that injunctive relief is not available to plaintiffs because the City is not currently enforcing or threatening to enforce the law. On January 10, 2005, we filed a response in which we argued that the City has not met its burden for dismissal of Plaintiffs' claims and denial of injunctive relief, our chosen form of action to challenge the validity of the enactment of the ordinances, is proper and the court has discretion to consider Plaintiffs' as-applied claims. After oral arguments on January 21, 2005, the judge denied the City's motion requesting dismissal of our civil rights claims, our request for a declaration that the ordinances are facially invalid, and our request for injunctive relief. The court granted the City's motion with regard to our request for a declaration that the City's actions were unconstitutional as applied to our clients The court also strongly urged the City to enter into a stipulation staying the enforcement of the ordinances and encouraged the parties to hold the case in abeyance during the pendency of the Ballen v. Redmond case at the Ninth Circuit. Discovery in this case is ongoing, and IJ-WA will likely complete depositions (while witnesses are available and memories remain fresh) before agreeing to hold the case.

Association of American Physicians and Surgeons et. al. v. Brewer et. al. (Arizona Chapter First Amendment—Clean Elections II)
Court: U.S. District Court for the District of Arizona
IJ Attorneys: Tim Keller and Scott Bullock

This case challenges the constitutionality of the Arizona Citizens Clean Elections Act on First and Fourteenth Amendment grounds. We represent: the Association of American Physicians and Surgeons, a professional medical group founded in 1943 and headquartered in Tucson; Matt Salmon, former three-term U.S. Congressman and 2002 Arizona gubernatorial candidate; Dean Martin, a sitting two-term state Senator; and Lori Daniels, former state legislator.

The Clean Elections system violates the free speech, free association, and equal protection rights of individuals and groups that want to be heard during political campaigns by drowning out the speech of certain groups depending on which candidate that group favors. If a group either opposes a government-funded candidate or favors a privately supported candidate with a government-funded opponent, the state matches their independent expenditure, dollar-for-dollar. But groups that favor a government-funded candidate can speak without fear of having their speech neutralized by the State.

The system also violates the free speech and equal protection rights of candidates who want to run for public office without taking taxpayer money through a series of provisions that tilt the playing field sharply in favor of government-funded candidates with privately supported opponents. Under the logic of *Buckley v. Valeo* and its progeny, involuntary limits on campaign expenditures—and attempts to equalize the relative financial resources of candidates—are both unconstitutional infringements of free speech under the First Amendment. Lower federal courts have likewise found that state public financing systems chill speech where they go beyond promoting participation in taxpayer funding, and actually begin punishing nonparticipation.

Only three of 18 major-party candidates for statewide office chose to run a traditional, privately-supported campaign in the last general election. Using the egregious examples from the 2002 race, we intend to demonstrate that this is a trend resulting from the system's coercive operation, as it punishes candidates who choose not to accept taxpayer subsidies.

The Arizona Center for Law in the Public Interest and the Brennan Center for Justice intervened on behalf of a government-funded candidate and the Clean Elections Institute, successor organization to Arizonans for Clean Elections, the group that sponsored the Act. IJ's motion for preliminary injunction was denied Both the State and the Intervenors filed motions to dismiss The Judge granted the State's motion to dismiss on March 10, 2005, and IJ appealed this decision to the Ninth Circuit on April 8. Our opening brief in the Ninth Circuit is due on 7/25/05 and the State's Response is due on 8/24/05.

ECONOMIC LIBERTY

Swedenburg, et al. v. Kelly, et al. (Economic Liberty—New York Wine)
Court: United States Supreme Court (appeal from Second Circuit)
IJ Attorneys: Clint Bolick and Steve Simpson
Local Counsel: Lance Gotko

In a narrow but decisive victory, the Supreme Court ruled in our favor on May 16th. The Court concluded that Michigan and New York's laws allowing in-state wineries to direct ship but preventing out-of-state wineries from doing so violated the commerce clause and were not authorized by the 21st Amendment. The decision was 5-4, with Justice Kennedy authoring the majority opinion, joined by Justices Scalia, Souter, Breyer, and Ginsburg. Justice Stevens wrote a short dissent, joined by Justice O'Connor. Justice Thomas separately dissented, joined by Justices Stevens, O'Connor and Rehnquist.

The decision was a decisive victory for IJ and our clients. The Court reaffirmed the principle that states may not discriminate against out-of-state interests in clear and sweeping terms. The principle, according to the Court, "is essential to the foundations of the Union. The mere fact of nonresidence should not foreclose a producer in one State from access to markets in other States. . . . States may not enact laws that burden out-of-state producers or shippers simply to give a competitive advantage to in-state businesses."

The Court saw through New York's claim that it technically allowed direct shipping as long as non-New York wineries opened an office and warehouse in New York, concluding that this was "just an indirect way of subjecting out-of-state wineries, but not local ones, to the three-tier system." This, in the Court's words, granted "in-state wineries access to the State's consumers on preferential terms."

On the question of the proper scope of the 21st Amendment, the Court agreed with our argument that its purpose was to allow states broad authority to regulate alcohol, but not to discriminate against interstate trade. The Court then rejected the states' arguments that the bans were justified by the need to prevent underage drinking and facilitate tax collection, saying that the States offered no evidence to support these arguments.

Justice Thomas, who wrote the primary dissent, took issue primarily with the majority's view of the 21st Amendment. In Justice Thomas's view, the purpose of the amendment was to give virtual plenary power over alcohol distribution to the states, whether they discriminated against interstate trade or not.

The Supreme Court's decision concludes the Michigan case, but our case is still alive for the time being. As it often does, the Court reversed and remanded the case back to the Second Circuit "for further proceedings consistent with our opinion." The Second Circuit will now get the case and, presumably, decide the proper remedy as between striking down the ban on out-of-state direct shipping or striking down the exemption for in-state direct shipping. We have already briefed this issue in the Second Circuit, but the court may still ask for additional briefing on the topic. We will also have the issue of attorney's fees to address at the appropriate time

The decision will impact most directly the other 6 states whose laws discriminate against out-of-state wineries and in favor of in-state wineries. There are also 16 states that ban direct shipping in various measures, many of whose laws may be subject to challenge under the Court's decision, meaning that the issue will now return to the state legislatures and the lower courts. We have no current plans to investigate additional potential cases in this area, but will address them on a case-by-case basis. We will, however, rely on this decision in our dormant commerce clause cases for many years to come.

Ventenbergs, et al. v. City of Seattle, et al. (Washington Chapter Economic Liberty—Trash Hauling)
Court: Washington State Court of Appeals Division I (appeal from King Co. Superior Court)
IJ Attorneys: William R. Maurer, Jeanette M. Petersen and Charity Osborn

The Institute for Justice Washington Chapter filed suit in King County Superior Court on May 13, 2003. The suit challenged the City of Seattle's grant of territorial monopolies to Rabanco and Waste Management for the hauling of construction and demolition waste within the boundaries of the City. On February 23, 2004, the Superior Court issued a decision denying IJ-WA's motion for summary judgment and granting summary judgment in favor of the City, Rabanco and Waste Management.

On March 8, 2004, we filed a notice of appeal with the Washington State Court of Appeals, Division I. On April 19, 2004, the Washington Refuse and Recycle Association (WRRA) filed a motion for permission to file an amicus brief with the Court of Appeals. We filed our opening brief on June 28 and our reply briefs to the City, Rabanco, Waste Management and WRRA on August 27. We also moved to strike portions of the City's brief and for sanctions against the City for submitting evidence in its brief that was not presented to the trial court.

The Building Industry Association of Washington (BIAW) submitted a motion to file an amicus brief on IJ-WA's behalf along with that brief on December 10, 2004. The City filed a Response on December 16 asking the Court to deny BIAW's motion on the grounds that it was prejudicial and would not be helpful to the Court, and the Court inexplicably denied BIAW's brief on January 10, 2005. On January 11, 2005, a three-judge panel heard oral arguments from IJ-WA and the City of Seattle (with counsel for Rabanco and Waste Management present but not participating).

A little over a month later, on February 14, 2005, the Washington Court of Appeals upheld the trial court's decision for the City, Rabanco and Waste Management. In a disappointing and cursory Unpublished Opinion, the court wrote that the City may restrict people from hauling CDL because the regulation of solid waste collection is a police power function and gave broad deference to the City's decision to contract exclusively with Rabanco and Waste Management. It also held that no valid contract existed between Ventenbergs and Haider, that the takings' claim was frivolous, and that the procedural arguments were moot It struck portions of the City's brief in response to IJ-WA's motion, but stated that doing so did not affect the outcome of the appeal and denied IJ-WA's request for sanctions. Rabanco and Waste Management (joined by Amicus Curiae Washington Refuse and Recycling Association) moved to publish the appellate court's decision but, following timely responses from IJ-WA, the court

issued an Order Denying Motion to Publish on March 29, 2005.

On March 16, 2005, IJ-WA filed a Petition for Review with the Supreme Court, requesting that it review whether the Court of Appeals erred by ruling that the City's restrictions were a legitimate exercise of the police power even though the evidence demonstrated otherwise, that Haider did not have a right to freely alienate his property simply because it had no monetary value, and that the City could not be required to conform to a statutorily mandated process for issuing contracts for public interest reasons, and for failing to address whether the City's grant of two monopolies exceeded its authority and refusing to impose sanctions against the City The City (joined by Rabanco) answered on April 15, IJ-WA replied on May 3, and the BIAW submitted an amicus brief on IJ-WA's behalf on May 13. We currently await the Court's decision, which will be issued without oral argument.

Meadows v. Odom (Economic Liberty—Louisiana Flowers)
Court: U.S. District Court for the Middle District of Louisiana
IJ Attorneys: Clark Neily and Chip Mellor
Local Counsel: Michael Fontham

On March 3, 2005, the district court granted summary judgment in favor of the Louisiana Horticulture Commission, finding that Louisiana's florist licensing scheme was rationally related to public health and safety, consumer protection, and enhancing the reputation of the floral industry. The 30-page opinion is generally unremarkable—it cites the usual rational basis cases and offers the usual glib analysis in favor of the government. The judge did note the circuit split between IJ's Tennessee and Oklahoma's casket cases (*Craigmiles* and *Powers*) and specifically found that the *Powers* decision, in which the Tenth Circuit upheld Oklahoma's casket sales restrictions, "was decided in accordance with established Supreme Court precedents" and should be followed.

Shortly before the district court issued its summary judgment ruling, the magistrate judge ordered the Defendants to turn over certain documents that they had refused to produce in the course of discovery, claiming a spurious privilege. Those documents consisted of emails between the States' lawyers and their retained expert in which the expert offered some rather disparaging comments about the florist licensing scheme, including his belief that there was a "mismatch between the state's goal of licensing credible florists and the means to achieve that goal." We were in the process of preparing a motion to supplement the summary judgment record with those documents when the district court handed down its summary judgment ruling, accordingly, we filed a motion for reconsideration based on the newly disclosed documents, which the district court denied. Because they were attached to the motion for reconsideration, however, the documents are now part of the record.

We have filed our notice of appeal in the Fifth Circuit, and we expect briefing to commence in June and run through the middle or end of August. According to the Fifth Circuit's website, the court has almost no backlog at this time and parties may expect oral argument within about three months after briefing is complete

Anderson v. Board of Barber & Cosmetologist Examiners, (Minnesota Chapter - Economic Liberty) – **New Case**
Hennepin County District Court
IJ Attorneys: Lee McGrath, Nick Dranias

On April 20, IJ-Minnesota filed its initial case challenging Minnesota's licensing regime that requires hairbraiders to become licensed cosmetologists. IJ-MN represents Lillian Anderson, a native of Cameroon who owns Extensions Plus in Minneapolis. We also represent Egaychu "Gigi" Asres and Saleemah Shabazz. (Ms. Shabazz is not related to Malcolm X although she has the same last name as his daughter who lives in Minneapolis).

In February, IJ-Minnesota requested and received a letter from Minnesota's Department of Commerce stating that Minnesota's cosmetology laws apply to braiders. This letter helped ensure standing despite the fact that a braider has not been prosecuted in five years Having that base, IJ-Minnesota filed a complaint that claimed that the cosmetology regulations violated the trio of 14th Amendment protections and the corresponding protections in Minnesota's state constitution.

Within one week of filing, the State's Attorney General Office contacted IJ-Minnesota and offered to settle the case by a consent decree. Because of the uncertain applicability of consent decrees to other braiders, IJ-Minnesota counter proposed that its clients wanted the Board of Barbers & Cosmetology Examiners to engage in rulemaking that would, in administrative law, define braiding and free it from regulation by the Board or any local unit of government.

As of May 13, IJ-Minnesota and the AG's office have had two rounds of negotiations. At present, it appears that the AG's office will recommend to its clients that they accept IJ-MN's proposed order that includes rulemaking that (1) broadly defines braiding, (2) frees braiders from regulation by the Board, (3) includes the Board's admitting that its actions violated the federal and state constitutions as applied to braiders, (4) requires the Board to spend one of its meetings per year discussing how it can reduce barriers to entry for barbers and non-braiding cosmetologists, and (5) ensures that local municipalities are preempted from licensing braiders. Although Minnesota is a strong preemption state, we anticipate resistance to the final component of the order but believe we are well positioned to resist the State's preference not to preempt local municipalities that often license occupations.

Should the defendants agree to a rulemaking that addresses the five issues, IJ-MN will stay its case until April 20, 2006. IJ-MN would then drop its case when the Board enacts as rules the wording that we have proposed. Should rulemaking not occur by the first year anniversary of the filing, IJ-MN would re-initiate litigation in Hennepin County District Court and be able to enter the order as evidence of the Board's admission of constitutional violations.

State Board of Embalmers & Funeral Directors v. Gegner, (Economic Liberty – Missouri Caskets) – **New Case**
Court Dallas County (MO) Circuit Court
IJ Attorneys: Clark Neily, Valerie Bayham

On May 25, 2005, the Missouri State Board of Embalmers and Funeral Directors filed an injunction petition against Larry Gegner, a Missouri funeral consumer advocate, seeking to prevent him from advising people about their rights when dealing with funeral directors and to enjoin him from selling caskets without a license—even though there is no law prohibiting these activities.

On June 24, 2005, the Institute for Justice filed an Answer and Counterclaim, seeking to invalidate several Board regulations and prevent the Board from overstepping its legislative authority. On issues relating to First Amendment expression, IJ asked for a more definite statement by the Board in order to flesh out the extent of its' concerns regarding Mr. Gegner's consumer advocacy.

Based on the allegations in the Petition, it appears that the Board may be attempting to prevent families from planning private funerals and burials without the assistance of a licensed funeral director, thereby interfering with privacy rights of Missourians. We will continue to look for ways to formalize the Board's position on this issue, and—if appropriate—bring in additional Third-Party Plaintiffs to assert privacy claims.

McAferty v. City of Seattle, et al., (Washington Chapter Economic Liberty—Bed & Breakfast)
Court: King County Superior Court
IJ Attorneys: Jeanette Petersen, Charity Osborn

The Institute for Justice Washington Chapter filed suit in King County Superior Court on March 1, 2005, challenging the City of Seattle's illogical interpretation of an ordinance banning exterior alterations of structures to accommodate bed and breakfast use. IJ-WA represents Greenlake Guesthouse owners Blayne and Julie McAferty, who were ordered by the City to discontinue operation of their bed and breakfast after neighbors aggressively campaigned against it, alleging that the McAfertys had violated a portion of the Seattle Municipal Code banning exterior alterations of homes to accommodate bed and breakfast use. The McAfertys' violation consisted of adding two tasteful dormers to their home, which did nothing to alter the residential or historical character of the home or neighborhood.

In its suit and at a well-attended press conference, IJ-WA argued that there is no rational basis for prohibiting property owners from operating a bed and breakfast business in a home that has been remodeled when such a remodel would be perfectly legal under all other circumstances. At the City's request, IJ-WA filed a stipulated agreement and order on March 10 staying enforcement of the citation until the lawsuit is resolved and postponing the trial date until March 2006 IJ-WA transmitted the McAfertys' proposed settlement demands, which include: (1) the City must permanently abate the Notice of Violation that prohibits them from operating a B&B in their remodeled home; (2) the McAfertys may display a small sign outside their home that contains the name of their B&B; (3) the City must amend/modify the existing B&B ordinance to clarify or remove the "no exterior structural alteration" provision; and (4) the McAfertys must receive notification of future proposals and potential legislation that will impact B&B operators in the City. We currently await the City's response

PROPERTY RIGHTS

Kelo, et al. v. City of New London, et al. (Connecticut Eminent Domain)
Court: Superior Court of New London
IJ Attorneys: Scott Bullock, Dana Berliner, and Clark Neily
Local Counsel: Scott Sawyer

In March 2004, the Connecticut Supreme Court, in a 4-3 vote, ruled against the Fort Trumbull property owners and upheld the use of eminent domain for economic development. Given the sweep of the Court's ruling and the fact that it was so close, we filed both a motion for reconsideration and a motion to stay the Court's judgment pending review by the U.S. Supreme Court. The Connecticut Supreme Court denied our motion for reconsideration but granted our motion for a stay. We filed our petition for certiorari on July 19, 2004. It was the first time the Court had the chance to review the constitutionality of the use of eminent domain purely for the generation of tax revenue as opposed to the elimination of blight.

On September 28, 2004, the U.S Supreme Court granted our petition for certiorari. Main briefs were filed in December (our opening brief) and January (City/NLDC). We had 25 amicus briefs filed on our side. We had a very quick turn-around time for our reply brief, which was due on February 11. Oral argument took place before a packed Court on February 22, 2005 at 10:00 a.m.

On June 23, 2005, the Court issued a devastating 5 to 4 decision affirming the Connecticut Supreme Court's decision and holding that eminent domain may be used for private development. Justices O'Connor and Thomas wrote separate stinging dissenting opinions. On June 29, 2005, IJ launched a national campaign seeking to reform state laws and to protect homeowners and small businesses from eminent domain abuse in the wake of the Supreme Court ruling.

Brody v. Port Chester (New York Eminent Domain)
Court: Judge Harold Baer, U.S. District Court for the Southern District of New York,
U.S. Court of Appeals for the Second Circuit
IJ Attorneys: Dana Berliner, Bill Maurer and Chip Mellor
Local Counsel: Marty Kaufman, Atlantic Legal Foundation

Judge Baer denied our motion for summary judgment and granted the Village's motion, finding that the Village's application of New York's Eminent Domain Procedure Law did not violate Mr. Brody's due process rights. We have appealed to the Second Circuit. Our reply brief is due May 23, 2005, and we expect oral argument sometime in the summer.

State of New Jersey v. One 1990 Ford Thunderbird/Thomas v. Farmer (Forfeiture Case)
Court: Superior Court of New Jersey, Cumberland/Salem County
IJ Attorneys: Scott Bullock, Deborah Simpson, and Chip Mellor
Local Counsel: Joseph Chiarello

In this case, we challenge the direct profit incentive underlying New Jersey's civil forfeiture law, whereby law enforcement officials are entitled to keep the proceeds and property generated by forfeiture. We argued that this scheme violates the due process guarantees of the U.S. and New Jersey constitutions. We represent Carol Thomas, a former sheriff's deputy in Millville, New Jersey, whose son used her car without her knowledge or consent to sell marijuana to an undercover officer. The state arrested her son and filed a forfeiture action against her car, *State of New Jersey v. One 1990 Ford Thunderbird*. In addition to defending against the forfeiture action on behalf of Thomas, we filed a counterclaim in state court raising our constitutional arguments. We secured the return of her car and went on to brief and argue the constitutional claim.

Oral argument on the cross motions for summary judgment occurred on November 12, 2002 and, a month later, the trial judge declared the statutory section being challenged unconstitutional under the due process clauses of the U.S. and New Jersey constitutions. The judge stayed his ruling pending appeal.

The State appealed to the New Jersey Appellate Court, which in July 2004, reversed the trial court decision and upheld the constitutionality of the profit incentive. Because the order in the trial court was not "final," we had to file a motion for leave to appeal to the New Jersey Supreme Court rather than file a formal petition. The Court denied our motion in November 2004. Since the trial judge has now entered a final order in the case, we filed a more formal petition with the Supreme Court of New Jersey (after an initial pro forma filing with the appellate court, where we simply asked the court to reaffirm its earlier ruling). Even though it is somewhat of a long shot, we believe it is worth doing. The local ACLU, which filed an amicus brief on our side of the motion, also believes it is a good idea since the Court might have believed that the case would come up to them again once everything was final.

New Hampshire Home Inspection Case (Property Rights)
Court: United States District Court for the District of New Hampshire
IJ Attorneys: Bert Gall and Scott Bullock
Local Counsel: Curtis Payne of Enfield, NH

The property tax assessment code of New Hampshire requires both exterior and *interior* inspections of private homes throughout the state. If the property owner refuses an interior inspection, then, under New Hampshire law, the inspector may obtain an administrative search warrant to conduct the inspection. Of course, an administrative warrant, heretofore used only for business property or rental property, is based not on probable cause but merely on the existence of an inspection program. A magistrate automatically grants them. Even more disturbing, if a homeowner demands even an administrative warrant, he or she loses the right to appeal the eventual assessment.

The Board granted permission to challenge this inspection program as a violation of the Fourth Amendment to the U.S. Constitution. We have four excellent clients (two live in the town of Hollis; the other two live in Hudson) who are truly concerned that the "Live Free or Die" state would have such a program – one that actually makes it easier for government officials to get inside the homes of law-abiding citizens than it is to get inside the homes of

suspected criminals. On August 25th, 2004, we filed our lawsuit against the Board of Tax and Land Appeals, the Attorney General, and Hollis and Hudson in the federal district court for New Hampshire. The launch went well, with media coverage saturating the state. The state and town defendants responded by filing motions to dismiss, arguing that the lawsuit cannot be brought in federal court under the Tax Injunction Act (TIA). That act is meant to bar lawsuits infringing the ability of states to collect taxes. We argued that the law was not intended to shield government officials who commit constitutional violations in the course of their duties and that our clients' goal is not to avoid paying taxes. However, the district court granted the defendants' motions on February 17, 2005. The court's ruling did not touch upon the merits of the lawsuit; it stated only that we should bring the case in state court. We decided that rather than arguing the jurisdictional issue presented by the TIA on appeal – a process that could take well over a year and would delay, for probably a year, getting to an argument on the merits of the case – we would refile the lawsuit in state court. We plan to do that this summer, after first adding some state law claims, securing additional local counsel to help deal with state court procedure, and potentially adding additional clients.

Brumberg, et al. v. City of Marietta, et al. (Georgia Property Rights)
Court: Cobb County Superior Court
IJ Attorneys: Clark Neily and Chip Mellor
Local Counsel: Charles Mace

In July 2004, we filed suit in state court in Marietta, Georgia challenging a city of Marietta ordinance that requires landlords to have all of their properties inspected for possible housing code violations by city-approved "rental housing inspectors." We contend that these city-mandated, warrantless inspections violate the Fourth Amendment, and we have requested a permanent injunction forbidding any further warrantless, unconsented searches. The same ordinance was also challenged by two sets of landlords in two separate lawsuits that are currently pending in Cobb County Superior Court; those two lawsuits, together with ours, have been consolidated into one proceeding. No scheduling order has been entered, but the parties have engaged in written discovery. We plan to file a summary judgment motion shortly, but it is unclear whether or when the court will take it up, inasmuch as (a) there are several dispositive motions that have been pending for over six months; and (b) the city has not sought to enforce the inspection ordinance since the first set of landlords got a temporary restraining order preventing such enforcement in May 2004.

Gamble, et al. v. City of Norwood (Property Rights—Blight/Eminent Domain Challenge)
Court: Hamilton County Court of Common Pleas
IJ Attorneys: Scott Bullock, Dana Berliner, and Bert Gall
Local Counsel: Robert P. Malloy, Wood & Lamping, LLP

In November 2003, the City of Norwood filed eminent domain actions against five of the home and business owners we represent so that developer Jeffrey Anderson could build a complex of chain retail stores and high-end apartments. The judge in our original action decided that all of the issues raised in our complaint could be decided in the condemnation actions, so he dismissed our case on procedural grounds. We believed this ruling was clearly wrong under Ohio law, especially since it leaves the other four owners who do not face immediate

condemnation actions without a method to challenge the City's bogus blight designation. We appealed that decision and, on September 3, 2004, the First Appellate District Court in Ohio agreed with our position, ruling that property owners who do not yet face condemnation, like four of our original plaintiffs, do not need to wait until the City files an eminent domain action against them before being able to challenge a blight designation in court. The City filed a petition for certiorari to the Ohio Supreme Court on this issue in October. We filed a response in November (against the Court taking the case). The Court decided to take the case but, shortly before its opening brief was due, the City asked the Court for permission to withdraw its appeal. The Court granted the City's motion; thus, the favorable precedent we secured from the First Appellate District will not be disturbed.

Meanwhile, we raised the constitutional and statutory claims we originally brought in our September suit in the answers to the eminent domain actions filed by the City. Those cases were consolidated and put on a very expedited schedule. The trial lasted for one week, from April 12 through April 16, 2004. Both sides then filed post-trials in the case, which were due on April 30. We had oral argument before the judge on May 20.

In June 2004, the judge ruled in our favor on the blight issue—holding that the City had abused its discretion by declaring the neighborhood blighted—but went on to approve the use of eminent domain under the much more nebulous (and constitutionally suspect) "deteriorating" standard. Our clients have appealed this decision and, on April 18 (after briefing the issues on appeal), we argued the case before the First District Court of Appeals of Hamilton County. A decision is expected by the end of June. Unfortunately, one of our clients, Dr. David Dahlman, who owns a chiropractic office in the area, has agreed to settle with the City and the developers Nick Motz and his wife, who own a design business in the neighborhood, also later agreed to a settlement. However, the rest of our clients are holding fast and are determined to keep fighting through the appellate process.

While pressing forward with our appeal, we have also been fighting to preserve our clients' homes and businesses from demolition. The developer intended to commence evictions and destroy the homes and businesses during appeal, so we filed a motion for injunction pending appeal on behalf of the clients whose compensation trials ended first (and who would be booted from their properties by the beginning of February) with the trial court. On December 1, the trial court denied that motion, so we then filed a motion for injunction pending appeal with the appellate court on December 21. In late January, the court of appeals denied our motion, so we then asked the Ohio Supreme Court to protect our clients' homes and businesses. While our motion was pending before that court, Jeffrey Anderson forced the Gambles from their home, threatening to put them on the street if they did not vacate the premises. Rather than living under siege and waiting for the sheriff's knock on the door, the Gambles hurriedly packed up their belongings in the span of three days and moved out on February 4. We took Anderson and the City to task for this act of cruelty in the media, drawing local and national media attention to the Gambles' being forced from their home in the middle of winter On February 22 (the same day that we were arguing *Kelo* before the U.S. Supreme Court), the Ohio Supreme Court came to the aid of the Gambles – granting our motion and holding that Anderson could not destroy their home while their appeal was being decided. Although none of our clients currently occupy their

properties, court orders now protect the homes and businesses of all our clients who are appealing the trial court's decision.

On Friday, May 20, 2005, the appeals court affirmed the trial court decision and held that the property could be condemned. It skimmed over most of our claims and just based its decision on deference. There are also a few outright errors in its characterization of cases. We will be petitioning for review from the Ohio Supreme Court. Meanwhile, the stays against demolition remain in place.

Lowery v. Muskogee County (Oklahoma Eminent Domain Amicus Brief)
Court: Oklahoma Supreme Court
IJ Attorneys: Dana Berliner
HAN Attorney: Daniel Muino

This is an Oklahoma state challenge to the use of eminent domain purely for economic development. Our brief was filed in 2004. The Oklahoma Supreme Court received additional briefing from the parties in February 2005. We continue to await a decision but suspect the court is waiting for the Kelo decision from the U.S. Supreme Court.

City of Pasco v. Shaw, et al. (Washington Chapter – Property Rights Amicus Brief)
Court: Washington State Court of Appeals, Division III
IJ Attorneys: Bill Maurer, Jeanette Petersen

On May 5, 2004, the Court of Appeals affirmed the constitutionality of a city ordinance that mandates that landlords bring third-party inspectors into rental apartments in order to conduct searches of the property for compliance with the housing code. Such searches were to be carried out whether or not the renter consents to such a search. Because the attorneys for the renters did not discuss the history or theory of Washington's prohibition on warrantless searches, IJ-WA submitted a brief discussing in detail how the Washington Constitution creates an affirmative right to privacy and how the framers of our Constitution intended this right to be more extensive than the privacy interests in the United States Constitution. On September 17, 2004, we submitted our brief, along with a motion for leave to file such a brief. The court accepted it on October 1, and oral arguments were held October 21.

We have left messages with the attorney of record in the hope that she plans to file a Petition for Review with the Washington State Supreme Court, but she has yet to return our calls. In the event that the Supreme Court accepts the case, we would like to continue amicus participation.

Didden v. Port Chester (Eminent Domain Abuse Amicus Brief)
Court: U.S. Court of Appeals for the Second Circuit
IJ Attorney: Dana Berliner
HAN Attorney: Rachel Clark

This case involves the same development project as our long-standing New York eminent domain case. The legal issues, however, are quite different. In brief, Didden owns a piece of

property at the border of the redevelopment area. He made a deal with CVS to build a pharmacy there. The developer went to him and said that he wanted to put a Walgreens there, and unless Didden paid him $800,000 or made him a partner, he would condemn the property. Didden refused, and the Village duly condemned. Didden has a lot of claims, many of which are probably barred by a statute of limitation. However, we were especially concerned by one aspect of the trial court's ruling—namely, that the demand for $800,000 was not actionable because you can't complain if someone threatens to do something that they have a right to do. This seemed like an incredibly pernicious doctrine in the context of the government, and various bribery statutes suggest that it is wrong. Moreover, it raises the specter of cities designating large areas for possible condemnation and then using that to exact cash payments in exchange for not condemning. Our amicus brief thus addressed that single issue and argued that the $800,000 threat was indeed a legal problem. Continuing our attempts to involve former IJ law clerks in amicus briefs, this brief was drafted by HAN member and former IJ clerk Rachel Clark.

There has been no ruling yet. However, oral argument went on far longer than the time originally assigned to it, and the focus of the court's questioning was the $800,000 demand. While one can never be sure about the influence of amici, it appears our brief in this case was quite successful. The court focused on the issue that we briefed far more than any other issue in the case.

Miscellaneous

Ashcroft v. Raich (Commerce Clause Amicus Brief)
Court: United States Supreme Court
IJ Attorneys: Dana Berliner and Chip Mellor
Co-counsel: Richard Epstein

This is the case challenging the federal prohibition on marijuana possession for medical purposes. It is a case purely about the Commerce Clause. Our brief was submitted on October 13, 2004. Oral argument was held on November 29, 2004, but was quite intense and not very promising. The Justices appeared interested in the practical effects but not the Commerce Clause and not their two better and recent Commerce Clause decisions. On June 6, the Court issued a 6 to 3 decision reversing the 9th Cir. and upholding federal power to regulate intra-state activity under the Commerce Clause. The majority decision stands in stark contrast to the Court's two earlier decisions in *Lopez* and *Morrison*, which also dealt with this question Justices O'Connor, Rehnquist and Thomas dissented.

Form **8868**
(Rev. December 2004)
Department of the Treasury
Internal Revenue Service

Application for Extension of Time To File an Exempt Organization Return

▶ File a separate application for each return.

OMB No. 1545-1709

- If you are filing for an **Automatic 3-Month Extension, complete only Part I and check this box** . . ▶ [X]
- If you are filing for an **Additional (not automatic) 3-Month Extension, complete only Part II** (on page 2 of this form).

Do not complete Part II unless you have already been granted an automatic 3-month extension on a previously filed Form 8868.

Part I **Automatic 3-Month Extension of Time** - Only submit original (no copies needed)

Form 990-T corporations requesting an automatic 6-month extension - check this box and complete Part I only . . . . . ▶ [ ]

All other corporations (including Form 990-C filers) must use Form 7004 to request an extension of time to file income tax returns. Partnerships, REMICs, and trusts must use Form 8736 to request an extension of time to file Form 1065, 1066, or 1041.

Electronic Filing (e-file). Form 8868 can be filed electronically if you want a 3-month automatic extension of time to file one of the returns noted below (6 months for corporate Form 990-T filers). However, you cannot file it electronically if you want the additional (not automatic) 3-month extension; instead you must submit the fully completed signed page 2 (Part II) of Form 8868. For more details on the electronic filing of this form, visit *www.irs.gov/efile.*

Type or print	Name of Exempt Organization	Employer identification number
	INSTITUTE FOR JUSTICE	52-1744337
File by the due date for filing your return. See instructions	Number, street, and room or suite no. If a P.O. box, see instructions. 1717 PENNSYLVANIA AVENUE, NW, NO. 200	
	City, town or post office, state, and ZIP code. For a foreign address, see instructions WASHINGTON, DC 20006	

Check type of return to be filed (file a separate application for each return)

[X] Form 990	[ ] Form 990-T (corporation)	[ ] Form 4720
[ ] Form 990-BL	[ ] Form 990-T (sec. 401(a) or 408(a) trust)	[ ] Form 5227
[ ] Form 990-EZ	[ ] Form 990-T (trust other than above)	[ ] Form 6069
[ ] Form 990-PF	[ ] Form 1041-A	[ ] Form 8870

- The books are in the care of ▶ THE ORGANIZATION
  Telephone No ▶ 202-955-1300 FAX No. ▶
- If the organization does **not** have an office or place of business in the United States, check this box . . . . . ▶ [ ]
- If this is for a **Group Return**, enter the organization's four digit Group Exemption Number (GEN) _____. If this is for the **whole** group, check this box ▶ [ ]. If it is for part of the group, check this box ▶ [ ] and attach a list with the names and EINs of all members the extension will cover

1 I request an automatic 3-month (6 months for a **Form 990-T corporation**) extension of time until FEBRUARY 15, 2006 to file the exempt organization return for the organization named above. The extension is for the organization's return for:
▶ [ ] calendar year _____ or
▶ [X] tax year beginning JUL 1, 2004 , and ending JUN 30, 2005

2 If this tax year is for less than 12 months, check reason. [ ] Initial return [ ] Final return [ ] Change in accounting period

3a If this application is for Form 990-BL, 990-PF, 990-T, 4720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions . . . . . $

b If this application is for Form 990-PF or 990-T, enter any refundable credits and estimated tax payments made. Include any prior year overpayment allowed as a credit $

c **Balance Due** Subtract line 3b from line 3a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required, by using EFTPS (Electronic Federal Tax Payment System). See instructions $ N/A

Caution. If you are going to make an electronic fund withdrawal with this Form 8868, see Form 8453-EO and Form 8879-EO for payment instructions.